

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DEUTSCHE BANK TRUST COMPANY :  
AMERICAS, as Trustee, :

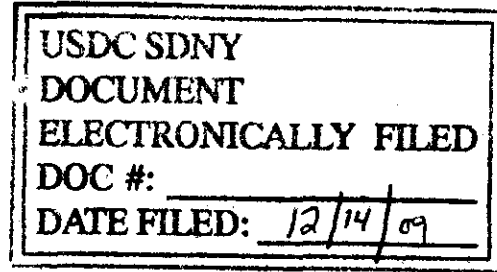
Plaintiff, :

-against- :

ELLIOTT INTERNATIONAL, L.P., LIVERPOOL :  
LIMITED PARTNERSHIP, SEI :  
INSTITUTIONAL INVESTMENTS TRUST HIGH :  
YIELD BOND FUND, an investment fund within :  
SEI Institutional Investments Trust, SEI :  
INSTITUTIONAL MANAGED TRUST HIGH :  
YIELD BOND FUND, an investment fund within :  
SEI Institutional Investments Trust, SEI :  
STRUCTURED CREDIT FUND, L.P., SHINKIN :  
CENTRAL BANK, STRUCTURED :  
PRINCIPAL STRATEGIES, LLC, ZAIS :  
INVESTMENT GRADE LIMITED II, DAVIS :  
SQUARE FUNDING II, LTD., SOCIÉTÉ :  
GÉNÉRALE, New York Branch, VERTICAL :  
CDO 2004-1 CORP., VERTICAL CDO 2004-1 :  
LTD., TALCOTT NOTCH CBO I (DELAWARE) :  
CORP., TALCOTT NOTCH CBO I, LTD., :  
SOJITZ CORP., SOJITZ :  
CORP. OF AMERICA, DEPOSITORY :  
TRUST COMPANY, as legal owner or holder of :  
record of Notes under the Indenture and legal :  
owner or holder of record of Preferred Shares :  
under the Preferred Shares Agreement, DOES 1 :  
through 100, owners of beneficial interests :  
in the Notes under the Indenture, and DOES :  
101 through 200, owners of beneficial interests :  
in certain Preferred Shares under the :  
Preferred Shares Agreement, :

Defendants. :

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09 Civ. 5242 (WHP)

MEMORANDUM & ORDER

WILLIAM H. PAULEY III, District Judge:

Deutsche Bank Trust Company Americas (the “Trustee”) seeks a declaratory judgment against the holders and owners of certain notes and preferred shares under an indenture dated September 18, 2002 (the “Indenture”). Aladdin Capital Management, LLC (“Aladdin”), the Indenture’s portfolio manager, moves to intervene as of right under Rule 24(a) or permissively under Rule 24(b). For the following reasons, Aladdin’s motion for permissive intervention is granted.

### BACKGROUND

The Indenture established a Collateralized Debt Obligation (“CDO”) consisting of a portfolio of commercial loan obligations purchased with the proceeds of Notes and Preferred Shares co-issued by Landmark II CDO, Ltd. and Landmark II CDO, Inc. (collectively “Landmark”). (Interpleader Complaint dated June 4, 2009 (“Compl.”) ¶¶ 45-46, 48-50.) The Notes are divided into four tranches. (Compl. ¶¶ 52, 62.)

On March 27, 2009, Elliott International L.P. (“Elliott”) and Liverpool Limited Partnerships (“Liverpool”), purported owners of Class A Notes, filed a Notice of an Event of Default with the Trustee (the “Notice of Default”). (Compl. ¶¶ 2-5, 52-53.) The alleged Event of Default was the purchase of certain notes with maturity dates longer than authorized under the Indenture for the portfolio (the “Long Dated Assets”). (Compl. ¶¶ 55, 60.)

The Trustee contacted Aladdin, the Indenture’s portfolio manager, regarding the Notice of Default. (Compl. ¶¶ 64-65.) Aladdin opined that the Long Dated Assets did not have a material adverse effect on the Noteholders. (Compl. ¶¶ 67-68.) Following the Notice of

Default, the Trustee withheld distributions to the Noteholders and deposited them in escrow.  
(Compl. ¶ 87.)

The Trustee seeks a declaration regarding whether an Event of Default occurred and, if so, whether it continues. Elliott, Liverpool, and several other Defendants cross-claim for a declaration that an Event of Default occurred and that the Notes are immediately due and payable to the Class A Noteholders.

### DISCUSSION

Federal Rule of Civil Procedure 24 provides for intervention either as of right or with the permission of the Court. Under Rule 24(b), a district court may permit any party to intervene which has a claim or defense that shares a common question of law or fact with the main action. See In re Holocaust Victim Assets Litig., 225 F.3d 191, 202 (2d Cir. 2000). In exercising its discretion, a court should consider “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3); Int’l Design Concepts, LLC v. Saks, Inc., 486 F. Supp. 2d 229, 235 (S.D.N.Y. 2007). As long as a court concludes that permissive intervention is appropriate, it need not consider the “more difficult question” of Rule 24(a) intervention. Int’l Design Concepts, 486 F. Supp. 2d at 234-35 (citing State of N.Y. v. Reilly, 143 F.R.D. 487, 489 (N.D.N.Y. 1992)).

Aladdin should be permitted to intervene in this action to ensure “the efficient adjudication of all parties’ interests.” Int’l Design Concepts, 486 F. Supp. 2d at 235. Aladdin’s proposed Answer and Counterclaims are premised on the same facts and seek a resolution of the same legal issues presented by the Trustee. Because this action seeks a declaration as to the

responsibilities and rights of all holders and owners of the Notes and Preferred Shares, it is essential that all parties to the dispute be before this Court. Aladdin's interest in this action is confirmed by a review of the Class A Noteholders' Cross-Claim, which alleges "gross negligence and recklessness" on Aladdin's part for failing to declare an Event of Default. As the portfolio manager, Aladdin controlled the assets at issue and gave its opinion on the events central to this litigation.


Finally, Aladdin's intervention at this early stage does not prejudice any party's rights. Nor will it delay a final resolution. See United States v. Pitney Bowes, Inc., 25 F.3d 66, 73-74 (2d Cir. 1994) (affirming denial of intervention where parties to the action had already agreed to the terms of the consent decree and where intervention would slow the implementation of the remedy).

### CONCLUSION

Accordingly, Aladdin Capital Management, LLC's motion to intervene under Fed. R. Civ. P. 24(b) is granted. Aladdin shall serve and file its responsive pleadings and claims by December 21, 2009.

Dated: December 14, 2009  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

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